

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KA-5

STATE OF LOUISIANA

VERSUS

JOSE D. BAYONA

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 24-6287, DIVISION "D"
HONORABLE JACQUELINE F. MALONEY, JUDGE PRESIDING

July 01, 2026

JOHN J. MOLAISON, JR.

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Scott U. Schlegel

CONVICTION AFFIRMED; SENTENCE VACATED;
REMANDED

JJM
FHW
SUS

TRUE COPY



JALISA WALKER
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COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Thomas J. Butler
Andrea F. Long
Rachel E. Warren

COUNSEL FOR DEFENDANT/APPELLANT,
JOSE D. BAYONA

Sara A. Clarke
Remy V. Starns

MOLAISON, J.

Jose Bayona, the defendant/appellant, appeals his conviction on one count of stalking. For the following reasons, we affirm the conviction, vacate the sentence, and remand for resentencing.

PROCEDURAL HISTORY

On January 14, 2025, the Jefferson Parish District Attorney filed a bill of information charging the defendant with stalking in violation of La. R.S. 14:40.2. The bill alleges that the defendant intentionally and repeatedly followed or harassed the victim in a manner that would cause a reasonable person to feel alarmed or to suffer emotional distress; the bill does not refer to a specific subsection of the statute. The defendant pled not guilty.

On October 7, 2025, the jury found the defendant guilty as charged. On October 21, 2025, the trial judge sentenced the defendant to one year in the Department of Corrections at hard labor and gave the defendant credit for time served. The judge ordered this sentence to run concurrently with any other sentence the defendant is currently serving.

The defendant filed this timely appeal.

FACTS

The defendant and the victim, A.A., were in a dating relationship from July through August 2024. A.A. ended the relationship because the defendant started doing “crazy” things.

A.A. lived and worked at an RV repair shop in Kenner, Louisiana. After A.A. ended the relationship, the appellant began appearing outside the shop, where he would sit and make accusatory telephone calls to A.A. The defendant parked outside the shop with his vehicle lights off, waited for A.A. to leave, and followed her. On other occasions, he drove by the shop while yelling expletives at her and her employer as they worked. He continued to send her messages via social media.

A.A. knew of three or four phone numbers associated with the defendant. After she blocked the known numbers, she continued to receive calls from unknown numbers. When she answered these calls, the defendant verbally threatened her. A.A. testified that she had no other ongoing conflicts during this period, and she “knew” these calls originated from the defendant, whom she suspected was using a calling application. A.A. testified that sometimes when she went places, the defendant parked behind her and turned off his lights. She described an occasion when she left a store, and the defendant followed her, almost hitting her vehicle.

A.A. told the defendant to stop contacting her and coming to the shop, but he did not. On one occasion, A.A. and her boss were outside working when the defendant stopped in the road and jumped out of his car with something in his hand. They thought the defendant had a weapon due to the threats he had made.

A.A. called 9-1-1 on October 27, 2024, to report the ongoing harassment. Officer Ryan Smith of the Kenner Police Department responded to the call and spoke with A.A., whom the officer described as “worried.” A.A. provided evidence of the incidents, including text messages and her call log. These text messages received by A.A., that were photographed by a crime scene technician and admitted into evidence, stated:

Y would u lie to me and use my feeling and emotions to use me play mind games like u cared lie n tease me telling me u going get stuff for me now u the opp n I don't care about prison I want to go back home it's where if safe at from people like u that hurts n the most painful ways the best easiest way to go home will b to kill u and the guy who tell u to use people like me so u both gotta die now.

And:

For u to say the u having sent back that was even worse the u using me n fkn other people n my face like I was stupid after this u will not even think doing it to someone else n the next bitch.

A.A. testified that the text messages did not show the defendant's contact name because he was using a new number after she blocked his other numbers. A.A. knew these messages came from the defendant in part because he had previously called her from that number.

The defendant continued to harass A.A., and she called 9-1-1 again on November 1, 2024. Officer Lilly Suns of the Kenner Police Department met with A.A., who was "shaken up" and scared. A.A. described the harassment and said she had previously reported it to the police, but the defendant had not stopped. Officer Suns reviewed the information A.A. had previously provided to Officer Smith and verified through LexisNexis that "the phone number that is in the report in which [Bayona] was texting [the victim] on" was a "cell phone number that he's had." Officer Suns prepared an arrest warrant for the defendant for stalking, and the defendant was arrested.

A.A. admitted that in December 2024, she agreed to drive the defendant to Slidell to retrieve his vehicle.

Evidence was also introduced that showed the defendant called a friend from jail and directed him to an address to confirm that A.A. lived at that address.

LAW AND DISCUSSION

In his sole assignment of error, the defendant argues that the trial court erred in admitting two photographs of two text messages into evidence without sufficient evidence to authenticate the authorship of the content of the photographed text messages.

Prior to trial, the defendant filed a motion to suppress the text message in which the defendant said he was not afraid to go back to prison, objecting to evidence of his prior convictions. During trial, when the State moved to introduce photographs of the two text messages, the defense did not object on the ground of insufficient authentication.

La. C.Cr.P. art. 841(A) provides, in part, that “an irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence.” In order to preserve the right to appellate review of an alleged trial court error, the party claiming the error must state an objection contemporaneously with the occurrence of the alleged error, as well as the grounds for that objection. *State v. Pichoff*, 25-211 (La. App. 5 Cir. 12/18/25), 428 So.3d 932, 950. Because defense counsel failed to lodge an objection to the authentication of the text messages, the issue of insufficient authentication was not preserved for appellate review.

Regardless, even if the issue had been preserved for review, any error in admitting the text messages was harmless. “An error is harmless when the verdict is surely unattributable to the error.” *State v. James*, 24-508 (La. App. 5 Cir. 7/30/25), 417 So.3d 103, 112.

At trial, A.A.’s testimony established that the defendant engaged in a deliberate, ongoing campaign of threats and harassment against her that would alarm and cause emotional distress to a reasonable person. The evidence established that the defendant continuously texted and called the victim, her boss, and her boss’s girlfriend and threatened them. In two 9-1-1 calls, A.A. said the defendant threatened to kill her. He sent someone to search for her residence while he was in jail awaiting trial. The defendant’s actions would cause a reasonable person to feel alarmed or to suffer emotional distress. Thus, the guilty verdict was unattributable to any error in admitting the photographs of the text messages.

ERROR PATENT DISCUSSION

We reviewed the record for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990). This review indicates that the trial court imposed an illegal sentence.

The defendant was charged with stalking in violation of La. R.S. 14:40.2. Although a specific subsection is not cited, the bill alleges that the defendant intentionally and repeatedly followed or harassed the victim in a manner that would cause a reasonable person to feel alarmed or to suffer emotional distress. The bill does not provide enhancing circumstances or set forth prior stalking convictions. There is nothing in the record to suggest that this conviction was not a first offense.

La. R.S. 14:40.2(B)(1)(a) states in part:

Notwithstanding any law to the contrary, on first conviction, whoever commits the crime of stalking shall be fined not less than five hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than one year. Notwithstanding any other sentencing provisions, any person convicted of stalking shall undergo a psychiatric evaluation.

The trial court gave the defendant an illegally excessive sentence at hard labor. The judge sentenced the defendant to one year in the Department of Corrections. After asking the defendant if he owned or possessed a firearm or had a concealed carry permit, the judge repeated that the sentence was one year in the Department of Corrections at hard labor. The sentencing minute entry and the uniform commitment order (UCO) both show that the judge imposed a sentence of one year at hard labor.

Except for La. R.S. 14:40.2(B)(1)(a), all other sentencing provisions of La. R.S. 14:40.2 specify that the sentence is imprisonment with or without hard labor. In addition, the trial judge did not impose the mandatory fine or order the defendant to undergo a psychiatric evaluation as required by La. R.S. 14:40.2(B)(1)(a). Therefore, the trial judge imposed an illegal sentence.

CONCLUSION

For the preceding reasons, we affirm the defendant's conviction, vacate the illegal sentence imposed by the trial court, and remand for resentencing.

**CONVICTION AFFIRMED; SENTENCE
VACATED; REMANDED**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JULY 1, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-KA-5

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE JACQUELINE F. MALONEY (DISTRICT JUDGE)

ANDREA F. LONG (APPELLEE)

MICHAEL A. MITCHELL (APPELLANT)

REMY V. STARNES (APPELLANT)

HONORABLE PAUL D. CONNICK, JR.
(APPELLEE)

SARA A. CLARKE (APPELLANT)

RACHEL E. WARREN (APPELLEE)

THOMAS J. BUTLER (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED